UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001	03 MDL 1570 (RCC) ECF Case

This document relates to: *Thomas Burnett, Sr. v. Al Baraka Investment & Develop. Corp.*, 03 CV 9849

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO MOTIONS TO DISMISS OF DEFENDANT ABDULLAH BIN ABDUL MOHSEN AL-TURKI

June 30, 2004

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INTRODUCTION

Defendant Abdullah Bin Abdul Mohsen Al-Turki seeks to dismiss the Complaint for want of personal jurisdiction and for defective service of process.[1] Essentially, Al-Turki argues that he cannot be made to answer for the murderous attacks on the United States perpetrated on September 11, 2001, because he claims to have had insufficient contact with the United States to satisfy the requirements of due process. This argument is wrong. Al-Turki – who in partnership with Muhammed Galeb Kalaje Zouaydi provided financing to European al Qaeda cells, including the Hamburg Cell that actually carried out the September 11 attacks -- aimed his conduct at the United States when he provided material support to Osama bin Laden and al Qaeda, with knowledge that al Qaeda was engaged in terrorist activities targeted primarily and specifically at the United States and its citizens and residents. The deliberate targeting of the United States satisfies the minimum contacts test, even if the defendant never entered the United States. The principle is a simple one: no one is entitled deliberately to plot, launch, or provide financing for attacks on the United States and evade U.S. justice merely because the attacks could be planned, supported or financed from afar.

Al-Turki's challenge to service of process fares no better. The method of service used here – service by publication – was specifically approved by the district court in Washington,

[1] Al-Turki's motion is one of a group of 11 nearly identical motions filed simultaneously by the law firm of Bernabei & Katz on behalf of 11 of the defendants (Shahir Abdulraoof Batterjee, Abdullah Omar Naseef, Abdullah bin Saleh Al-Obaid, Saleh Al-Hussayen, Sheik Salman Al-Oadah, Sheik Hamad Al-Husaini, Safar Al-Hawali, Abdul Rahman Al Swailem, Mohammed Ali Sayed Mushayt, Hamad Al-Hussaini, and Saudi Red Crescent) in this case. Because these motions make virtually identical (in many instance, verbatim) arguments, plaintiffs proposed to defendants' counsel that plaintiffs submit one consolidated response (of somewhat longer length than a single brief, but considerably shorter than the 275 pages allotted by the local rules to these 11 briefs) and that defendants submit a single, consolidated reply (again, of an adjusted length). Defendants refused and accordingly, plaintiffs now file a separate response to each motion. Plaintiffs have attempted to avoid duplication and hereby incorporate and cross-reference each of their responses into each of the others.

D.C. Moreover, it worked. Al-Turki received notice of this action, retained counsel and has appeared to defend himself. His argument that the notice approved by the Court was not reasonably calculated to apprise him of the pendency of this action when in fact it did precisely that rings hollow and should be rejected. The motion to dismiss should be denied in its entirety.

Nor is Al-Turki entitled to sovereign immunity. His business transactions with Zouaydi that financed al Qaeda's cell were personal and unrelated to his official duties. Al-Turki's official positions do not shield him from responsibility for these personal actions.

ARGUMENT

I. THIS COURT HAS PERSONAL JURISDICTION OVER AL-TURKI BECAUSE HE PURPOSEFULLY DIRECTED HIS CONDUCT AT THE UNITED STATES

Al-Turki contends that he is not subject to jurisdiction in this Court because he lacks minimum contacts with the United States. Defendant is wrong: he is subject to jurisdiction because, in supporting Osama bin Laden and al Qaeda in their terrorist war against America, Al-Turki purposefully directed his conduct at the United States. No more is required to satisfy the requirements of due process.[2]

To defeat a Fed.R.Civ.P. 12(b)(2) motion to dismiss for lack of personal jurisdiction made (like this one) before discovery, plaintiffs "need make only a prima facie showing by [their] pleadings and affidavits that jurisdiction exists." *Cutco Industries, Inc. v. Naughton*, 806 F.2d 361, 365 (2d Cir. 1986). To the contrary, the relevant statutory scheme anticipates and allows for liberal amendments as to jurisdiction. *See* 28 U.S.C. § 1653. That is particularly true

[2] Al-Turki also claims that the District of Columbia long-arm statute does not authorize jurisdiction here. But plaintiffs do not rely on the D.C. long-arm statute. Rather, they rely on Fed.R.Civ.P. 4(k)(2) which authorizes jurisdiction over foreign defendants in the United States for federal claims (including plaintiffs' claims under the Anti-Terrorism Act, 18 U.S.C. § 2333) where jurisdiction is not otherwise available, subject only to the due process limits of the Constitution. In the context of Rule 4(k)(2), the relevant minimum contacts are with the United States as a whole.

where the factual predicates are complex and the parties numerous, as herein. Moreover, in evaluating plaintiffs' *prima facie* showing of jurisdiction, the Court must construe all pleadings and affidavits in the light most favorable to plaintiffs and resolve all doubts in plaintiffs' favor. *PDK Labs v. Friedlander*, 103 F.3d 1105, 1108 (2d Cir. 1997). In addition, the Court "must read the Complaint liberally, drawing all inferences in favor of the pleader." *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1052 (2d Cir. 1993). Here, plaintiffs have satisfied their burden to make a prima facie showing that jurisdiction exists.

A. A Defendant Who Purposefully Directs His Conduct at the United States Can Reasonably Expect to be Haled Into Court Here, Even if the Defendant Was Never Physically Present

Al-Turki is subject to jurisdiction in this Court because he purposefully directed his conduct at the United States. For a discussion of the legal standard applicable here, plaintiffs respectfully refer the Court, and incorporate by reference, their memorandum of law in opposition to the motion to dismiss filed by Hamad Al-Husaini, filed contemporaneously with this memorandum.

B. The Complaint Adequately Alleges, and the Evidence Demonstrates, that, in Supporting Al Qaeda, Al-Turki Purposefully Directed His Conduct at the United States Because Al Qaeda Had Publicly Announced that the United States Was the Target of Its Terrorist Activities

The Third Amended Complaint and the evidence submitted sufficiently make out a *prima facie* case pleaded that, in supporting al Qaeda, Al-Turki purposefully directed his conduct at the United States so as to subject him to jurisdiction in the Courts of the United States.

1. Al-Turki Provided Material Support to Al Qaeda

The Complaint adequately alleges that Al-Turki provided material support to Osama bin Laden and al Qaeda. As alleged in the Third Amended Complaint, Al-Turki was a shareholder in a dummy corporation, Proyectos y Promociones ("Promociones"). Promociones purported to

be a construction, but engaged in no actual construction; instead, it provided financing for al Qaeda cells in Europe. 3AC ¶¶ 383-384. Al-Turki also entered into a partnership with Muhammed Galeb Kalaje Zouaydi with respect to certain business transactions in Spain. 3AC ¶ 386. Zouaydi, who was arrested by Spanish authorities on April 23, 2002, is a brother-in-law of Osama bin Laden. A top financier for al Qaeda, he also served as one of the original terrorists who fought with Osama bin Laden and the other original founders of al Qaeda. 3AC ¶ 283. Zouaydi used various Spanish businesses to launder money from Saudi Arabia through Spain to al Qaeda cells in Germany, including the Hamburg Cell that carried out the September 11 attacks. *Id.* at ¶¶ 18-39, 374. It appears that the business transactions between Al-Turki and Zouaydi were part of this money laundering scheme.

Al-Turki denies that he and Zouaydi were partners in Zouaydi's money laundering ventures, but evidence that plaintiffs have obtained demonstrates that Al-Turki indeed went into business with Zouaydi. A letter dated October 21, 1999, from Francisco G. Prol, apparently representing Zouaydi, details the state of the negotiations between Al-Turk and Zouaydi for Al-Turki's purchase of shares in Promociones and participation in certain real estate transactions. *See* Affirmation of Andrea Bierstein in opposition to motion of Abdullah Al-Turki ("Bierstein Al-Turki Aff.), Exhibit 1. Although Al-Turki claims that the letter was unsolicited, the details contained in it suggest that the letter was part of ongoing negotiations. Moreover, plaintiffs also have obtained a copy of check from Promociones dated September 15, 1999 for $191,000,000 Spanish pesetas; the check is made out to "D. Abdula Abdul Muhsen Al Turky" and appears to have been signed by Zouaydi and Bassam Dalati Satut on behalf of Promociones. *See* Bierstein Al-Turki Aff., Ex. 2. Al-Turki denies having received this check, but the numbers stamped along the bottom edge suggest that the check was in fact cashed. In any event, Al-Turki's bare

denials that these documents mean what they say are not credible. In 1999, when the letter was written and the check made out, there was no conceivable reason for Mr. Zouaydi to attempt to "frame" Al-Turki in this way. At the very least, plaintiffs are entitled to take discovery concerning Al-Turki's dealings with Zouaydi to shed further light on these documents.

Moreover, quite aside from Al-Turki's private business dealings with Zouaydi, Al-Turki is (and has been since 2000) the Secretary-General of the Muslim World League ("MWL"). As described in testimony before the House Committee on Financial Services Subcommittee on Oversight and Investigations in March, 2003, "As part of [its] mission over the past two decades, MWL has. . . secretly provided critical financial and organizational assistance to Islamic militants loyal to Al-Qaida and Usama Bin Laden." Matthew Epstein with Evan F. Kohlmann, "Arabian Gulf Financial Sponsorship of Al-Qaida via U.S.-Based Banks, Corporations and Charities," March 11, 2003, at 2, annexed as Exhibit 3 to the Bierstein Al-Turki Aff. According to Epstein and Kohlmann, MWL is one of "three organizations [that] served a critical role in the Arab-Afghan terrorist infrastructure by laundering money originating from bank accounts belonging to Bin Laden and his sympathetic patrons in the Arabian Gulf, providing employment and travel documents to Al- Qaida personnel worldwide, and helping "to move funds to areas where Al-Qaeda was carrying out operations." *Id.* at 1. Details of MWL's role in financing bin Laden are al Qaeda are provided in the Epstein and Kohlmann report.

That Al-Turki headed up this organization, which was such a prominent source of assistance to al Qaeda and bin Laden, demonstrates yet another avenue through which Al-Turki provided material support to al Qaeda.

In addition, the Complaint alleges, and the massive evidence that plaintiffs' have compiled demonstrates, that al Qaeda directed its terrorist activities against the United States *and*

that bin Laden announced this, repeatedly and publicly throughout the mid- and late 1990's, so that individuals like Mr. Al-Turki who provided material support in that period plainly knew that they were targeting the United States when they assisted al Qaeda with its terrorist agenda.

2. Al Qaeda Openly and Publicly Announced its Terrorist Agenda and Targeted the United States

It has been publicly known since the mid-1990s, if not well before, that Osama bin Laden and his Al Qaeda terrorist network had launched an international campaign of terror directed at the United States. For a complete discussion of the evidence demonstrating that supporters of al Qaeda were purposefully directing their conduct at the United States because the United States and its nationals were the primary avowed targets of al Qaeda, plaintiffs respectfully refer this Court to their memorandum of law submitted in opposition to the motion to dismiss filed by Hamad Al-Husaini, and to the Affirmation of Andrea Bierstein accompanying it, as well as to the exhibits annexed to the affirmation, all of which are hereby incorporated.

II. AL-TURKI WAS PROPERLY SERVED

Al-Turki also contends that he was not properly served. (Al-Turki Memorandum at 22-25.) Al-Turki makes the identical arguments about service by publication made by his co-defendant, Shahir A. Batterjee. Plaintiffs have addressed each of those arguments in their opposition brief to Shahir A. Batterjee's motion to dismiss. Rather than repeat those arguments here, plaintiffs instead respectfully refer the Court to, and incorporate by reference, that discussion.

As demonstrated in plaintiffs' memorandum of law in opposition to Sahir Batterjee's motion to dismiss, service by publication on defendants in the Middle East, including Al-Turki, was proper. On March 24, 2003, plaintiffs filed a motion for leave to serve by publication Defendants located in Saudi Arabia, Sudan and United Arab Emirates. Burnett D.D.C. Docket

No. 95, 3. (A copy of plaintiffs' motion papers is Exhibit 4 to the Affirmation of Andrea Bierstein submitted in opposition to the motion of Sahir Batterjee and hereby incorporation herein.) In that motion plaintiffs asked for an extension of time to serve all originally named defendants and, by implication, any defendants added subsequently that are either at large or in the region of the Gulf States, and specifically in Saudi Arabia, Sudan and United Arab Emirates. Additionally, plaintiffs asked for permission to serve by publication defendants that were listed in the Exhibit A attached to the motion, which included Al-Turki. On March 25, 2003, the Court granted the March 24, 2003 request to serve certain defendants by publication. Al-Turki was served by publication in *Al-Quds Al-Arabi* on June 3, 11, 18 and 24, and July 12 and 14, 2003 and in the *International Herald Tribune* on May 23, 30, June 6, 13, 20, and 27, 2003. Thereafter, Al-Turki appeared and filed this motion to dismiss. In short, plaintiffs served Al-Turki in accordance with the Court's March 25, 2003 order granting their March 24, 2003 request to serve certain defendants by publication and the notice successfully apprised him of this lawsuit.

III. THE FSIA DOES NOT PRECLUDE PLAINTIFF' SUIT AGAINST AL-TURKI

Al-Turki claims that he is entitled to sovereign immunity because he has held various positions in the Saudi Arabian government. Plaintiffs do not dispute that Al-Turki has been an official of the Saudi government and indeed (as Al-Turki points out), the Third Amended Complaint makes frequent reference to Al-Turki's various governmental positions. But the Complaint does not allege that Al-Turki's assistance to al Qaeda took place in Al-Turki's official capacity. Rather, while holding various religious and charitable offices, Al-Turki provided financing to al Qaeda cells in Europe through private business dealings with Zouaydi and through the dummy corporation, Promociones, which laundered money for al Qaeda. These

financial transactions could not have been part of Al-Turki's role as Minister of Islamic Affairs, Endowments, Calla and Guidance nor of his participation in the Higher Council of Islamic Affairs.

Moreover, plaintiffs's claims also arise from Al-Turki's role as Secretary-General of MWL, which Al-Turki himself describes as "an international Islamic *non-governmental* organization." Declaration of Abdullah bin Abdul Mohsen Al-Turki (Exhibit 1 to Al-Turki Motion to Dismiss), ¶ 10. Al-Turki's actions in this capacity also are personal, rather than governmental.

The law is quite clear that even government officials have no immunity for acts undertaken in a personal or private capacity. *See Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan*, 115 F.3d 1020, 1027 (D.C. Cir. 1997) ("Individuals acting in their official capacities are considered agencies or instrumentalities of a foreign state; these same individuals, however, are not entitled to immunity under the FSIA for acts that are not committed in an official capacity."); *accord El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 671 (D.C.Cir.1996). To the extent that the Complaint alleges that Al-Turki provided financial support to al Qaeda through private business transactions, the FSIA does not shield him from liability for those private acts.

But even if Al-Turki's acts were official, he would not be entitled to immunity because this case falls within both the "commercial activity" and the "tortious act" exceptions to the FSIA. A fundamental principle of the FSIA is that foreign sovereigns have no immunity when they behave like private actors, rather than like governments. The FSIA codifies a "restrictive, as opposed to absolute theory, of sovereign immunity in which 'immunity is confined to suits involving the foreign sovereign's public acts, and does not extend to cases arising out of a foreign state's strictly commercial acts.'" *Sun v. Taiwan*, 201 F.3d 1105, 1107 (9th Cir. 2000), quoting

Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480 (1983). *See also Republic of Argentina v. Weltover,* 504 U.S. 607, 614 (1992) ("the restrictive theory of sovereign immunity would not bar a suit based upon a foreign state's participation in the marketplace in the manner of a private citizen or corporation").

Plaintiffs note that although they have "the burden of going forward with evidence showing that . . . immunity should not be granted . . . the ultimate burden of persuasion remains with the alleged foreign sovereign" to show that the claimed exception does not apply and that immunity should be granted. *Virtual Countries, Inc. v. Republic of South Africa,* 300 F.3d 230, 241 (2d Cir. 2003). Al-Turki has not met that burden here.

The FSIA carves out a "commercial activity" exception and provides:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . (2) *in which the action is based upon* a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon *an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.*

28 U.S.C. § 1605(a) (emphasis added). Here, Al-Turki used various commercial enterprises outside the United States to cause a direct effect in the United States: he used various business contracts surreptitiously to provide financing to the Hamburg al Qaeda cell, whose members carried out the September 11 attacks. In *Weltover*, the Supreme Court held that an "effect is 'direct' if it follows 'as an immediate consequence of the defendant's activity.'" 504 U.S. at 618. The effect need not "foreseeable." *Id.; Princz v. Federal Republic of Germany,* 26 F.3d 1166, 1173 (D.C. Cir. 1994). Here, the September 11 attacks were a "direct effect" because the money that Al-Turki's companies provided to al Qaeda went to the Hamburg al Qaeda cell, to those who actually carried out the September 11 attacks. It is difficult to imagine a more direct connection that this.

Moreover, even if the "commercial activity" exception is not applicable, this case falls within the "tortious act" exception. *See* 28 U.S.C. § 1605(a)(5). That exception provides that a foreign official has no immunity for any case:

> in which money damages are sought against a foreign state for personal injury or death or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment . . .

28 U.S.C. § 1605(a)(5). Because plaintiffs' claims arise from deaths and injuries incurred in the September 11 terrorist attacks, they are seeking money damages for personal injury and/or death in the United States based on tortious conduct. Their claims fall squarely within this exception.

Echoing arguments made by co-defendants, Al-Turki contends that this exception does not apply because he has not committed any tortious acts and, even if he did, those acts did not cause plaintiffs' injuries. Al-Turki is wrong: under common law principles of aiding and abetting, Al-Turki may be charged with the murderous acts of the September 11 hijackers if he knowing provided substantial assistance to them. *See, e.g, Halberstam v. Welch*, 705 F.2d 472, 477 (D.C.Cir. 1983). *See also Robinson v. Government of Malaysia*, 269 F.3d 133, 143 (2d Cir. 2001) (plaintiff required to meet the same standard to fall within the "tortious act" exception as would be required to prevail on the merits). By entering into business ventures with Zouaydi for the purpose of providing covert financing to the al Qaeda members in Europe who carried out the September 11 attacks, Al-Turki knowingly and substantially assisted the hijackers – indeed, without the financing provided by the al Qaeda network to the Hamburg cell, those attacks could not have taken place. Indeed, the causal connection between Al-Turki and the attacks of September 11 is much tighter here than in those situations where defendants provided funding to charities that were known conduits to al Qaeda (although, as set forth in Plaintiffs' Consolidated Memorandum Of Law in Opposition to Sultan Bin Abdulaziz Al-Saud's Motion to Dismiss

Certain Consolidated Complaints, to which plaintiffs respectfully refer the Court and which is incorporated by reference herein, those acts satisfy the "tortious act" exception as well). Here, the very purpose of Al-Turki's business transactions with Zouaydi was to transfer money to the al Qaeda cell that carried out the hijackings on September 11. In so doing, Al-Turki (and, to be sure, Zouaydi) caused those hijackings as surely as if they had purchased Mohammed Atta's plane ticket directly.

Even with respect to his official role on the Higher Council of Islamic Affairs, Al-Turki cannot claim sovereign immunity because plaintiffs' claims fall within the "tortious act" exception. This is the same body that Sultan bin Abdulaziz Al-Saud chairs, *see* Declaration Of Abdulaziz H. Al Fahad (Exhibit 2 to Al-Turki Motion to Dismiss). Al-Turki cannot claim immunity for actions attributable to his role on this council for the same reasons that Sultan cannot. Rather than repeat those arguments, plaintiffs respectfully refer to the Court to, and incorporate by reference, the papers submitted by plaintiffs in opposition to Prince Sultan bin Abdulaziz al-Saud's Motion to Dismiss Certain Consolidated Complaints.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss pursuant to Rule 12(b)(1), 12(b)(2) and 12(b)(5) should be denied in its entirety.

Dated: New York, NY
June 30, 2004

Respectfully submitted,

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